

1 KATHLEEN A. LEAVITT
CHAPTER 13 BANKRUPTCY TRUSTEE
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E-FILED

5 **UNITED STATES BANKRUPTCY COURT**
6 **DISTRICT OF NEVADA**

7 IN RE:
DIVINA AQUINO

8 Debtor(s)

CHAPTER 13
CASE NO: BKS-19-12664-ABL
MOTION TO DISMISS

9 MOTION TO DISMISS
Hearing Date: 03/12/2020
Hearing Time: 2:00 pm

10 ISSO AND HUGHES LAW FIRM
Attorney for the Debtor

11 Comes now KATHLEEN A. LEAVITT, Chapter 13 Bankruptcy Trustee, in the above captioned
12 bankruptcy case and files this Motion based on the Memorandum of Points and Authorities as follows:

13 **Memorandum of Points and Authorities**

14 **Statement of Facts**

15 1. Debtor(s) filed an Original Petition under Chapter 13, Title 11 of the United States Code on
16 04/30/2019.
17
18 2. Debtor(s) Plan has not been confirmed.
19
20 3. Trustee requests that the Court take Judicial Notice of the Docket in this case.

Argument

21 The Trustee requests that this case be dismissed pursuant to 11 U.S.C. § 1307 (c) for one or more of the
22 following reasons:

23
24 • Debtor(s) is/are delinquent in plan payments. 11 U.S.C. §1307(c)(1)
• Debtor(s) failed to comply with notice/re-notice requirements. Failure to set a confirmation
hearing according to 11 U.S.C. § 1324(b) F.R.B.P. 2002(a) & (b) & 11 U.S.C. §1307(c)(1)

- Compensation of Debtor(s)' attorney requires an independent review by the court. Trustee requests that Debtor(s)' attorney file an application for compensation pursuant to 11 U.S.C. §330.
- The Plan fails to provide for all of the Debtor(s)' Disposable Income pursuant to 11 U.S.C. §1325(a)(3) and (b) based on: Debtor contributes \$1509 per mo to her 401k while paying 0% to general unsecured creditors. 11 U.S.C. sec. 1325(a)(3). Trustee objects to the voluntary retirement contribution as this expense is not permitted during the pendency of the bankruptcy case. *Parks v. Drummond*, 475 B.R. 703 (9th Cir. B.A.P. 2012).
- Other: Trustee objects to the Debtor paying for daughter's car insurance since she is working per testimony (Rav4)

Debtor(s) failed to cooperate with the Trustee as necessary to enable the Trustee to perform her duties

pursuant to 11 U.S.C. §521(a)(3), §704 and/or §1302. This failure to cooperate has caused unreasonable delay

that is prejudicial to creditors under 11 U.S.C. §1307(c)(1) as the Debtor(s) did not provide the following

documents:

- Verification of Childcare and education costs of \$500; verify charitable contribution of \$200..
- Amendment to Plan: Section 2.3 is not correct; Section 5.1- clarify treatment of this claim and a Proof of Claim or other order will be required in order for the Trustee to pay this claim. .
- Amendment to Schedule J. Current Expenditures of Individual Debtor(s): to remove vehicle payment of \$380 for the 2019 Toyota C-HR unless intent is to pay directly..

Conclusion

WHEREFORE, for the foregoing reasons, the Trustee recommends that this case be dismissed pursuant to

11 U.S.C. §1307(c).

Dated: 1/30/20

/s/ Kathleen A. Leavitt

Kathleen A. Leavitt
Chapter 13 Trustee